CANADIAN HUMAN
RIGHTS COMMISSION

RESPECT
PROTECTION
PROMOTION
EQUALITY

Annual Report 2007

Canada

NATIONAL OFFICE

Canadian Human Rights Commission
344 Slater Street, 8th Floor
Ottawa, Ontario K1A 1E1
Telephone: (613) 995-1151
Toll Free: 1-888-214-1090
TTY: 1-888-643-3304
Fax: (613) 996-9661
Electronic Mail: info.com@chrc-ccdp.ca
Website: www.chrc-ccdp.ca

NATIONAL ABORIGINAL INITIATIVE

750 - 175 Hargrave Street
Winnipeg, Manitoba R3C 3R8
Telephone: (204) 983-2189
Toll Free: 1-866-772-4880
TTY: 1-866-772-4840
Fax: (204) 983-6132

REGIONAL OFFICES

ATLANTIC

504 - 5475 Spring Garden Road
Halifax, Nova Scotia B3J 3T2
Telephone: (902) 426-8380
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (902) 426-2685

QUEBEC AND NUNAVUT

425 de Maisonneuve Blvd. West
Montréal, Quebec H3A 3G5
Telephone: (514) 283-5218
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (514) 283-5084

ONTARIO

902 - 110 Yonge Street
Toronto, Ontario M5C 1T4
Telephone: (416) 973-5527
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (416) 973-6184

ALBERTA , PRAIRIES AND NORTHWEST TERRITORIES

Canada Place
1645 - 9700 Jasper Avenue
Edmonton, Alberta T5J 4C3
Telephone: (780) 495-4040
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (780) 495-4044

BRITISH COLUMBIA AND YUKON

301 - 1095 West Pender Street
Vancouver, British Columbia V6E 2M6
Telephone: (604) 666-2251
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (604) 666-2386

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CANADIAN HUMAN RIGHTS COMMISSION
COMMISSION CANADIENNE DES DROITS DE LA PERSONNE

Chief Commissioner *Présidente*

March 2008

The Honourable Noël A. Kinsella
Speaker of the Senate
The Senate
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker,

Pursuant to section 61 of the *Canadian Human Rights Act* and section 32 of the *Employment Equity Act*, I have the honour to transmit the 2007 Annual Report of the Canadian Human Rights Commission to you for tabling in the Senate.

Yours sincerely,

Jennifer Lynch, Q.C.

Jennifer Lynch, Q.C.

Encl.

c.c.: Mr. Paul Bélisle
Clerk of the Senate and Clerk of the Parliaments

Ottawa, Canada K1A 1E1

CANADIAN HUMAN RIGHTS COMMISSION
COMMISSION CANADIENNE DES DROITS DE LA PERSONNE

Chief Commissioner *Présidente*

March 2008

The Honourable Peter Milliken, M.P.
Speaker of the House of Commons
House of Commons
Ottawa, Ontario K1A 0A6

Dear Mr. Speaker,

Pursuant to section 61 of the *Canadian Human Rights Act* and section 32 of the *Employment Equity Act*, I have the honour to transmit the 2007 Annual Report of the Canadian Human Rights Commission to you for tabling in the House of Commons.

Yours sincerely,

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Encl.

c.c.: Ms. Audrey O'Brien
Clerk of the House of Commons

Ottawa, Canada K1A 1E1

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CHIEF COMMISSIONER'S MESSAGE

Thirty years ago, the authors of the *Canadian Human Rights Act* were intent on creating more than a piece of anti-discrimination legislation. Through section 27, they articulated their vision for a Commission that fosters understanding and recognition of human rights principles.

This year marked a turning point for the Commission. Through outreach, we strengthened our role as a proactive and influential human rights catalyst, both nationally and internationally.

The Commission continued to inform and influence public debate. In particular, in the context of issues affecting Aboriginal peoples and communities, the Commission made gains in encouraging the repeal of section 67 of the *Canadian Human Rights Act*.

Influencing a positive shift in the culture of human rights in Canadian society requires the cooperation of a large network of organizations and people. Open dialogue, collaboration and shared responsibility created progress towards integrating human rights into daily practice and produced solutions to human rights challenges within workplaces and service delivery centres.

A streamlined, more user-friendly *Employment Equity Act* compliance audit process encouraged employers to take on a greater role in their compliance.

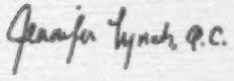
Increased emphasis on early dispute resolution through mediation and informal dialogue better served those who contacted the Commission about possible discrimination. Positive impacts for those involved included reduced emotional distress, strengthened morale, increased productivity and savings in time and money.

Significant gains were made for the rights of persons with disabilities through the Supreme Court of Canada's decision involving the Council for Canadians with Disabilities and VIA Rail; the Commission argued persuasively as an intervener at the hearings. Globally, the United Nations Convention on the Rights of Persons with Disabilities was a major milestone in international human rights law; the Commission was a partner in drafting the Convention.

The international human rights community acknowledged our expertise by electing the Commission as Chair of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. In this role, we support the creation and strengthening of national institutions worldwide. We are also leading a review of the Committee's functions, structure, procedures and governance.

Within the Commission, we continue to foster our own organizational culture of respect, integrity, dignity, and understanding that supports our role as a dynamic and progressive leader in human rights promotion and practice.

It is my privilege to lead such a committed, high-performing organization. The Commission's staff and Commissioners embody our values; and their professionalism, expertise and unwavering commitment are the essential qualities that will sustain our new momentum as an innovative leader in promoting the human rights agenda.



Jennifer Lynch, Q.C.
Chief Commissioner

THE COMMISSION'S MANDATE

The Canadian Human Rights Commission (CHRC) administers the *Canadian Human Rights Act* (CHRA) and is responsible for the enforcement of employers' obligations under the *Employment Equity Act* (EEA).

The purpose of the *Canadian Human Rights Act* is

> *to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.*

The purpose of the *Employment Equity Act* is

> *to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.*

Both laws seek to ensure that the principles of equal opportunity and non-discrimination are followed in all areas of federal jurisdiction. The Commission aims to advance equality, respect for human rights, and protection from discrimination by fostering understanding of, and compliance with, these two Acts.

Three main programs support the Commission's mandate.

- **Human Rights Knowledge Development and Dissemination Program** develops research, policies and legal analysis to foster understanding of, and compliance with, the *Canadian Human Rights Act* and the *Employment Equity Act*. The Program also provides leadership, support and tools both nationally and internationally.
- **Discrimination Prevention Program** works with employers and other stakeholders on prevention and employment equity activities to prevent discriminatory behaviour and ensure that there is reasonable progress in representation of the four designated groups.
- **Human Rights Dispute Resolution Program** works to resolve human rights disputes involving federally regulated employers, service providers and individuals and represents the Commission in public interest cases. The Program focuses on early intervention to settle disputes.

DEVELOPING UNDERSTANDING

The Commission proactively informs and influences public debate. Our research supports and stimulates constructive discussions with stakeholders to increase understanding of how human rights can be integrated into daily practice.

The issues highlighted within this section represent some of the current and emerging human rights challenges shaping Canadian society.

ABORIGINAL ISSUES

First Nations people continue to be denied the protection from discrimination that other citizens take for granted – an unacceptable situation in a free and democratic society that values fundamental human rights.

Still a Matter of Rights

In October 2005, the Commission released *A Matter of Rights*, a special report calling for the urgent repeal of section 67 of the *Canadian Human Rights Act*. This report brought section 67 to the forefront of public attention and concern and continues to be widely quoted by parliamentarians and stakeholders in the debate on the need for repeal.

The Commission will again contribute to the public dialogue by issuing a supplementary report to *A Matter of Rights* in January 2008. This supplementary report analyzes key issues raised by First Nations and other stakeholders and provides recommendations on how to move matters forward.

Canada's Response to the United Nations Declaration on the Rights of Indigenous Peoples

The passage of the Declaration on the Rights of Indigenous Peoples on September 13, 2007, marked a milestone for the world's indigenous peoples, and for the United Nations.

The Declaration affirms that indigenous peoples are entitled to all human rights recognized in international law, without discrimination. It sets out their individual and collective rights, including those related to culture, identity, language, employment, health, education, land and resources. The Declaration emphasizes the rights of indigenous peoples to maintain and strengthen their institutions, cultures and traditions in keeping with their needs and aspirations.

While the Declaration is not legally binding, it represents "a standard of achievement to be pursued in a spirit of partnership and mutual respect."

Canada had been a longstanding supporter of the Declaration during the course of its development, and the Commission regrets that the Government of Canada felt unable to support its adoption at the final stages.

The Commission urges governments and First Nations leaders to work together in finding innovative ways to advance the principles of the Declaration, and to achieve the standards set therein. This includes addressing pressing concerns in areas such as child poverty; access to potable water, adequate housing, education, and employment opportunities; the resolution of land claims; and the extension of full human rights protection – all of which allow individuals to contribute to society and to live with dignity.

National Aboriginal Initiative: Repealing Section 67

The Commission's Aboriginal Initiative aims to strengthen relations with Aboriginal peoples, and coordinates Commission activity relating to First Nations and other Aboriginal issues.

A priority for this initiative in 2007 was to continue calling for the repeal of section 67 of the *Canadian Human Rights Act* – the section that denies First Nations citizens full access to human rights redress under the CHRA.

By appearing before the Standing Committee on Aboriginal Affairs and Northern Development in April and June, the Commission contributed its expertise to the dialogue on repeal. The dialogue that has begun is just the beginning of a much larger process required to prepare for repeal.

The Commission and First Nations groups have started on a path of listening and learning – the key to building, designing and implementing an effective Aboriginal human rights system – to support the repeal of section 67.

Information on the CHRA and the implications of repeal in communities has been provided through media interviews, presentations at conferences organized by First Nations partners and meetings with First Nations leaders. In support of these activities, the Commission established a new section on its website, conducted targeted mail-outs to more than 35 groups representing Aboriginal stakeholders across the country, and opened communication with each group through the Commission's regional offices.

Amongst the many stakeholders, there is not one unique shared vision of how repeal is to be implemented. Yet there is a strong, and growing, consensus that repeal must occur:

- The Assembly of First Nations supports human rights principles generally, and has suggested significant amendments to the proposed legislation to protect the collective rights of First Nations communities.
- The Native Women's Association of Canada supports the principle of repeal, and insists that effective community consultation and capacity building will be necessary.
- The Congress of Aboriginal peoples has championed the need for repeal, and has included human rights as an element of a cross-country informational campaign.

The voices of other stakeholders – representatives of interested First Nations, leaders of Aboriginal women's organizations, and individual members of First Nations communities – have further enriched this dialogue. The Commission will continue to offer its leadership to guide a collaborative approach amongst the Commission, First Nations and government in planning for the implementation of repeal.

Alternative Dispute Resolution in Aboriginal Contexts: A Critical Review

In preparation for the Government of Canada's hearings on the repeal of section 67, the Commission published a report that assessed alternative redress mechanisms in Aboriginal contexts.

This research identifies and acknowledges those Aboriginal dispute resolution mechanisms – already in place or under development – that can inform the development of the Commission's own future practices for resolving human rights issues that arise within Aboriginal communities.

Three modes of alternative dispute resolution processes are identified in the report. One mode involves Western-based options such as negotiation, mediation, conciliation, and arbitration. A second mode involves indigenous processes, which call for resolving disputes according to the culture and custom of the indigenous party involved. A third mode is a combination of the two.

These three approaches share similar challenges. Whether using an indigenous practice, a Western option, or some combination of the two, issues of power, cultural differences, and language barriers need to be addressed.

DISABILITY

Disputes related to the ground of disability remain the largest proportion of complaints received by the Commission. This is in spite of the fact that most federal employers and service providers are developing accommodation strategies to ensure compliance with the *Canadian Human Rights Act*.

The Commission is conducting research focused on barriers faced by people with disabilities, and on the effectiveness of the Commission's dispute resolution mechanisms for this community. It will also assess the Commission's effectiveness in responding to issues of systemic discrimination, and identify outstanding systemic barriers so that proactive and preventive strategies to remove those barriers can be developed.

Convention on the Rights of Persons with Disabilities

Disability gained visibility in international law on March 30, 2007, when 81 countries signed the United Nations Convention on the Rights of Persons with Disabilities.

A major milestone in the evolution of human rights, the Convention entrenches in international law the rights of the world's 600 million persons with disabilities.

The Government of Canada showed commendable leadership during both the drafting and signing of the Convention. Now, for the Convention to come into force, ratification by 20 countries is required, 14 of which had done so by the end of 2007. The Commission calls for the Government of Canada to continue its leadership by completing consultations with the provinces and territories and ratifying the Convention.

The Commission also contributed to the drafting of the Convention, attending the UN drafting session as part of the delegation of members of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).

The Convention includes new and innovative provisions for monitoring domestic implementation of the Convention, including a potential role for human rights institutions. The Commission intends to offer its expertise to Government to ensure effective implementation of the Convention.

A Guide for Managing the Return to Work

Absences due to disability or illness are among the most challenging human resource situations facing employers today. Statistics show that costs generated by disability and income programs for persons with disabilities are steadily rising, as are productivity losses. And, when employees return to the workforce after a prolonged absence, they may face difficulties that give rise to complaints to the Commission. Sensitive to these concerns, the Commission has produced a guide to help employers properly manage these cases so that employees can return to work safely, quickly and efficiently.

Environmental Sensitivities

The need to accommodate environmental sensitivities continues to gain recognition, yet the condition is still misunderstood. Two Commission reports released this year explore the legal and medical aspects of environmental sensitivities. These reports summarize scientific literature about the medical aspects of environmental sensitivities, and offer guidelines for accommodation that may prevent discrimination and reduce health and safety risks in the workplace.

The reports have received positive reactions from a broad spectrum of stakeholders: individuals with environmental sensitivities, organizations, foreign governments, lawyers, workers' compensation boards, public health departments, physicians and other health care practitioners, and professors of medicine.

No Alternative: A Review of the Government of Canada's Provision of Alternative Text Formats for People Who Are Blind, Deaf-Blind or Visually Impaired

The Government of Canada is increasingly seeking the views and participation of Canadians in the development and delivery of policies and programs. Engaged citizens read pertinent information on federal websites and order print copies of publications and brochures.

No Alternative provides objective baseline data on the availability, accessibility, effectiveness and quality of documents in alternative formats provided by federal institutions. It also makes recommendations for improving the provision and quality of documents in alternative formats for people who are blind, deaf-blind or visually impaired.

Publications in the Past Year:

- No Alternative: A Review of the Government of Canada's Provision of Alternative Text Formats
- A Guide for Managing the Return to Work
- Accommodation for Environmental Sensitivities: Legal Perspective
- The Medical Perspective on Environmental Sensitivities
- Alternative Dispute Resolution in Aboriginal Contexts: A Critical Review

All Commission publications are available online at www.chrc-ccdp.ca

HATE ON THE INTERNET

Freedom of expression is a cornerstone of any democracy and care must be taken to protect it. Canadian courts have long affirmed that freedom of expression must be balanced against the societal harm that can be done by irresponsible speech, especially when that speech takes the form of hatred.

Hate on the Internet continues to be a troubling phenomenon. The Internet is a low cost, borderless platform for those who wish to spread hatred and sow social disharmony.

Section 13 of the *Canadian Human Rights Act* provides a unique tool to help combat hate on the Internet:

> 13.(1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.
>
> (2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.

In addition to its role in processing complaints, the Commission has represented the public interest by intervening in hate case hearings before the Canadian Human Rights Tribunal (CHRT). To date, the Tribunal has issued more than 15 decisions in complaints against Canadians connected to hate websites or materials. In all instances the Tribunal has ruled against the respondents and ordered them to close down their websites and pay damages – sending a powerful message of social solidarity to all those targeted by hatred and contempt.

As effective as section 13 has been, the Commission recognizes that complaints are only one tool of many that must be used to combat hatred in Canadian society. The Commission is continuing to work with civil society organizations and governments towards developing a comprehensive strategy to combat hatred in all its aspects.

What Is Hate?

"The phrase 'hatred or contempt' in the context of s.13(1) refers only to unusually strong and deep felt emotions of detestation, calumny and vilification..."

– Canada (Human Rights Commission) v. Taylor, [1990] 3 S.C.R. 892

NATIONAL SECURITY AND HUMAN RIGHTS

In 2006, the Commission published a report that explored the recently expanded authority of several Canadian security agencies and the potential impact on human rights.

The report recommended that the Commission:

- review Canadian security, intelligence agencies and their monitoring bodies;
- assess the identity certification process within the context of the Smart Border Agreement; and,
- analyze profiling as a tool for delivering security.

The Commission has undertaken all three recommended projects. Each explores a facet of national security through the perspective of human rights – identifying the potential human rights considerations and endorsing the development of non-discriminatory practices.

The review of security and monitoring agencies is complete. It will be made public following its review by a working group composed of the various security organizations.

LEARNING FROM THE PAST AND LOOKING TO THE FUTURE

Sexual Orientation

Recognizing that sexual orientation equality rights have been achieved in Canada in a relatively short period of time, the Commission conducted research to identify what contributed to this rapid success. The project included a historical overview of how freedom from discrimination on the basis of sexual orientation became a human right in Canada, and an examination of the role the Commission played in this regard.

The research concluded advancements in sexual orientation equality rights came about through a sustained, multi-faceted effort that was undertaken despite the lack of political enthusiasm or initial public support for the issue.

Social Condition

The visible rise of social inequalities in Canada has sparked renewed debate over whether "social condition" should be added as the twelfth prohibited ground of discrimination within section 2 of the *Canadian Human Rights Act*.

In 2007, the Commission began research to better understand the larger social and institutional implications of such an amendment.

The Human Rights Report Card

The Commission has launched a project that is unique both within Canada and internationally: research into the development of a Human Rights Report Card. A report card can provide a basis of comparison over time, allowing human rights commissions to focus their preventive work, as well as informing the public of the status of human rights within Canada.

The first phase of a multi-year project to design a Human Rights Report Card was completed in 2007. Phase one explored the feasibility of producing a report card by developing a conceptual framework and preparing a prototype using existing data collected from various sources. The authors concluded that it was not possible.

In response, the Commission has begun phase two with the aim of producing a truly national report card by engaging – through extensive consultations – various stakeholders, including provincial and territorial human rights commissions. The resulting prototype would be the basis for collecting data specifically for the purpose of producing the report card.

Public Information

The Commission's website is an increasingly important source of information for its stakeholders and the public. Improving the website for the end-user was a focus in 2007. Visitors are now able to better target their inquiries and find resources and information. Increased outreach and public awareness initiatives resulted in an increase in requests for printed copies of publications.

Serving Canadians	2005	2006	2007
Website visitors	720,612	1,127,599	1,545,327
Publications distributed	44,848	51,796	85,512

INTERNATIONAL ACTIVITIES AND PRIORITIES

In March 2007, the Chief Commissioner was given the mandate to provide Canadian leadership and assistance to foreign governments and international organizations through the promotion of human rights principles and institution building. This mandate is supported by three strategic priorities established by the Commission and its staff:

- strengthening human rights institutions in other countries;
- advancing international human rights priorities in international fora; and
- promoting the domestic implementation of international human rights standards.

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

The Commission's leadership on the international stage was recognized when it was elected in March 2007 to a three-year term as chair of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) – a body that coordinates over 60 accredited national human rights institutions (NHRIs).

In its first year of presidency, the Commission has undertaken three major initiatives:

- successfully negotiating formal recognition of the standing of the ICC and all national institutions accredited with "A Status," within the new United Nations Human Rights Council and its related mechanisms, and following up with a strong presence at the United Nations.
- launching a governance review: The Commission is engaging its members in a restructuring that will bring the ICC to the level of development and maturity required to support its expanding mandate. This includes the ICC functions, governance, structure and a sustainable funding base.
- furthering efforts to strengthen the ICC accreditation process, leading a revision of its procedures, and ensuring that it reflects the principles of transparency, rigour and independence.

The ICC's full potential can only be met by strengthening its four regional networks of NHRIs: the Americas, Africa, Asia-Pacific and Europe. The Commission leads initiatives to share best practices; to build partnerships; to provide technical assistance; and to foster new, and strengthen existing, national institutions.

The role played by ICC members and civil society in the development and adoption of the UN Convention on the Rights of Persons with Disabilities serves as an excellent example of the collective potential of national human rights institutions to advance human rights around the world.

Network of the Americas

In 2007, the Commission continued its active commitment to the activities of the Network of the Americas, including the Network's Sixth General Assembly held in Mexico in October 2007. The Commission is also exploring future collaboration opportunities between Network members, the Organization of American States (OAS) and the Inter-American Commission on Human Rights.

Commonwealth Human Rights Forum

In May 2007, the Commission was elected to the Steering Committee of the Commonwealth Human Rights Forum, created for the purpose of bringing together Commonwealth human rights actors to build a collective influence in larger international fora.

PREVENTING DISCRIMINATION

The Commission works closely with employers and other stakeholder groups to promote culture change towards workplaces and service delivery centres that are free of discrimination. Commission staff across Canada work with employers and stakeholders to identify challenges and encourage solutions.

The Commission shares the credit for the ongoing success of the Discrimination Prevention Program with its partner employers and stakeholders who have demonstrated a real commitment to improving their working environments.

The open dialogue between the Commission, employers and other stakeholders inspires the Commission's adaptive discrimination prevention initiatives. Interactive workshops, sharing resources and proven practices, and *Employment Equity Act* compliance audits provide employers with the necessary tools to prevent discrimination and promote the shift towards a human rights culture.

WORKING TOWARDS A COMMON GOAL: PREVENTION WORK WITH EMPLOYERS

Innovation stems from successful collaboration. The Prevention Initiatives and Liaison Division has chosen to channel its efforts by working strategically with key organizations to enhance and expand discrimination prevention initiatives. These initiatives support employers in realizing greater sensitivity to human rights within the workplace, and provide them with the tools to anticipate differing needs, and to respond to misunderstandings before they develop into discrimination complaints.

The program aims to help employers and service providers:

- create awareness amongst managers concerning their rights and responsibilities, and support them in gaining skills;
- implement and support human rights-related policies and practices;
- establish and/or maintain mechanisms to address complaints internally; and,
- address human rights concerns quickly and effectively.

Discrimination Prevention Forum – Diversity '07

The Commission held its third annual Discrimination Prevention Forum in October 2007. This annual forum is an opportunity for the Commission, federally regulated employers and members of civil society from across the country to come together to identify and discuss emerging issues, share knowledge and experience, and develop tools to prevent discrimination.

This year's discussions and workshops explored accommodating mental health issues and religious differences, disability management and return to work, medical information and functional assessments, and the role of community groups in preventing workplace discrimination.

> "Collaborative dialogue is key to the Commission's new phase of outreach and relationship building. We are already seeing tremendous benefits flow from this approach."
>
> Chief Commissioner Jennifer Lynch, Q.C.
> Canadian Human Rights Commission

> "Promoting diversity as an asset, as these organizations do, to enrich our workplaces and our communities is a goal we should all share."
>
> Louise Arbour
> United Nations High Commissioner for Human Rights
> and former Justice of the Supreme Court of Canada

> "If we are all going at it alone then we are reinventing the wheel every time whereas if we are sharing our knowledge and the experience that we have, we've got the potential to come up with more effective and efficient solutions to complex problems."
>
> Tabatha Tranquilla
> Human Rights Advisor
> Labour Relations and Human Rights
> Royal Canadian Mounted Police

This event broke new ground as the first Discrimination Prevention Forum to be held in conjunction with the Canada Public Service Agency's Duty to Accommodate Conference. This cooperative initiative was well received by delegates and was praised by keynote speaker, Louise Arbour, United Nations High Commissioner for Human Rights and former Justice of the Supreme Court of Canada.

Employer Advisory Council (EAC)

The Employer Advisory Council (EAC) meets quarterly to raise, examine, discuss and act on issues aimed at preventing discrimination in workplaces and service centres across Canada.

The EAC is made up of organizations that have signed Memoranda of Understanding with the Commission. Members benefit from a close working relationship with the Commission. In turn, the Commission is informed of emerging issues identified by partner organizations. This year, the Report of the Employer Advisory Council Sub-Committee on Accommodation Issues was submitted to the Council.

The EAC also facilitates broader communication. Prevention-related matters, proven practices, tools, and resources reach a greater audience throughout various sectors thanks to the diversity of the Council's membership and the relationships forged by the Commission's offices across Canada. As the diversity of membership continues to increase, so too will the Commission's ability to share prevention information and resources with various sectors.

Employer Advisory Council members also have access to the Community of Practice website – a new tool that aims to facilitate a smooth transition between the formality of a council structure and the fluidity of an electronic community of practice. As members of a learning e-community with extensive resources, employers and Commission representatives from across the country share information and participate in forum discussions.

Current EAC Members

Canada Border Services Agency
Canada Post Corporation
Canadian Forces
Canadian Pacific Railway
National Bank of Canada
Penauille Servisair Inc.
Purolator Courier Ltd.
Royal Canadian Mounted Police
WestJet Airlines

Memoranda of Understanding

Establishing Memoranda of Understanding (MOUs) with employers of federal jurisdiction is integral to the success of all activities initiated by the Prevention Initiatives and Liaison Division.

As part of these MOUs, the Commission works closely with each organization to develop solutions to human rights challenges. Once an organization has committed to making discrimination prevention a priority, our specialists meet with their management team to identify areas of concern. Strategies to address these concerns are developed by a team of experts from the Commission and a specially selected group of people from the partner organization with expertise in the identified areas of concern.

These solutions can include creating new policies or changing existing ones; sharing proven practices through human rights training and information; and developing instruments to assist employers, such as case studies, presentations, posters and interactive teaching tools.

Moving forward as part of a focused strategy, the Commission will offer to expand its outreach and prevention initiatives to include unions and community organizations by linking them to our MOU signatories.

Community Bridging – Stakeholder Engagement

Beyond working directly with employers to prevent discrimination, the Commission also engages civil society – non-governmental organizations (NGOs), unions, and other stakeholders – in order to hear their concerns and benefit from their perspectives.

Acting as the hub of a network, the Commission leverages the relationships built by the offices across Canada to bring NGOs and employers together to foster dialogue and decide how they want to work together. NGOs and employers are both enthusiastic about the potential for progress.

Tools and Resources

A commitment to preventing discrimination in the workplace is a commitment to cultural change. Building a culture of human rights in the workplace requires training, policies, systems, and people within the organization who understand how to deliver these programs.

Tools and resources have been developed to assist organizations with culture change and contribute to the Commission's ability to deliver its commitments within the MOUs by giving people the ability to identify and prevent discrimination.

In 2007 the Commission piloted the Train-the-Trainer program to teach employers to deliver CHRC workshops to their employees on the duty to accommodate and anti-harassment. The Commission provides continued support, resources and advice to the trainers through online fora and regular communication. Lessons from the original pilot project have contributed to enhancing and improving the Train-the-Trainer program for 2008.

EMPLOYMENT EQUITY COMPLIANCE PROGRAM

Striving for Continuous Improvement

As an essential component of the Commission's Discrimination Prevention Program, the Employment Equity Compliance Program supports the Commission's commitment to renewal and continuous improvement. The Program requires employers to identify barriers to employment for the four designated groups – women, visible minorities, Aboriginal peoples, and persons with disabilities – and implement proven practices to eliminate those barriers. The Commission is mandated to conduct audits of public sector and federally regulated private sector workplaces to ensure compliance with the *Employment Equity Act*.

A results-based approach has led to a new streamlined audit process, which provides employers with a smoother, faster and user-friendly audit experience. The audit process has been further improved through increased outreach and information sharing. Through workshops explaining the audit process, a simplified framework document and a compliance questionnaire, employers are encouraged to fulfill their responsibility and take on a greater role in their compliance *before* they engage in the audit process.

In 2007, invitations were extended to over 600 federally regulated employers. Workshops were held in Montreal, Toronto, Ottawa, Calgary and Vancouver and nearly 200 managers, human resources advisors and employment equity officers participated. Compliance Review Officers and statistical analysts explained procedures and answered questions in order to provide a clear understanding of the audit process. Feedback was extremely positive and encouraging.

This collaborative and proactive approach to ensuring that organizations are compliant with the Act has increased the Program's output significantly.

What Employers Have to Say About Our Employment Equity Audit Workshop

"I was pleasantly surprised to find the EE Audit Workshop very informative and helpful. It was also good to hear from other participants who had experienced some of the same frustrations we have. I'm glad I attended. Thanks again for a worthwhile day."

Stephen Evans
Vice President, Loss Control & Regulatory Compliance
H&R Transport Ltd

"I want to say a special thank you to you and your colleagues for the excellent workshop. The presentation was well organized, very informative and practical in its approach. I have had a number of comments from our members regarding how useful it was."

Nancy Leamen
Director, Human Resources Policy
Policy Division
Canadian Bankers Association

"Thanks to you and your colleagues for informing us of the changes in the Act compliance audit process. We are happy to see that your group is committed to shortening the length of time for the individual audit completion. With the comprehensive information we received, we feel more prepared to document our compliance with the Act, which we strongly support."

Tom Proszowski
Director, Employment Equity & Diversity
Canadian Imperial Bank of Commerce

Streamlined Audits

The Commission has implemented a streamlined audit process, designed to accurately reflect the results-oriented environment in which the program currently operates. A simplified process and shorter timelines for completing audit steps and the approval process mean that employers can move faster to resolve issues identified during the audit. By placing greater emphasis on monitoring progress and measuring results using evidence-based analysis, auditors are able to provide employers with clearer direction.

A number of systemic challenges have been observed during the audit process. Solutions to these challenges form part of the work that the Prevention Initiatives and Liaison Division engages in with employer groups. This ensures that employers benefit from targeted advice, prevention tools and enhanced information for the continuous improvement of the human rights culture in the workplace. The program has demonstrated that employers need support in building on the information and knowledge they require to increase their compliance, and to sustain the progress they have made with employment equity.

The new audit process is also designed to gather valuable information on successful strategies and proven practices for increasing representation of the designated groups, which is shared with employers.

Employment equity should not be seen as something within the job description of an employment equity manager to be monitored as a statistic. Rather, achieving employment equity should be articulated in the organization's vision, values and objectives, and be supported both in its business plans and through institutionalized incentives such as performance measurement and accountabilities for all managers.

Streamlined Audits

The Commission's new audit process provides employers with:

- A clearer process
- Shorter time frames
- Streamlined internal approval process
- Greater focus on progress and results
- Evidence based analysis of compliance

Employment Equity Audit Workshops:

- Inform employers about the new process
- Strengthen understanding of their obligations
- Encourage them to be proactive and compliant before they are audited
- Direct them to tools available to ensure compliance

Ensuring Progress for Designated Groups

To achieve equality in the workplace, employers covered by the Act are to monitor the progress made in the representation of designated groups. The audit experience tells us that, too often, employers are not adequately monitoring their employment equity program.

Our audit process now includes a progress assessment phase focusing on the achievement of hiring, promotions and representation goals by employers. By placing greater emphasis on monitoring progress and measuring results using evidence-based analysis, auditors are able to provide employers with clearer direction.

Profile of Employers Subject to the Act

The following table shows the number of employers subject to the *Employment Equity Act* and the number of employees in each sector, including those who have been or are being audited. It also highlights the Commission's focus on auditing larger employers, where the potential impact for progress in the employment of designated groups is greatest. For the first time, more than one million employees are covered by the Act.

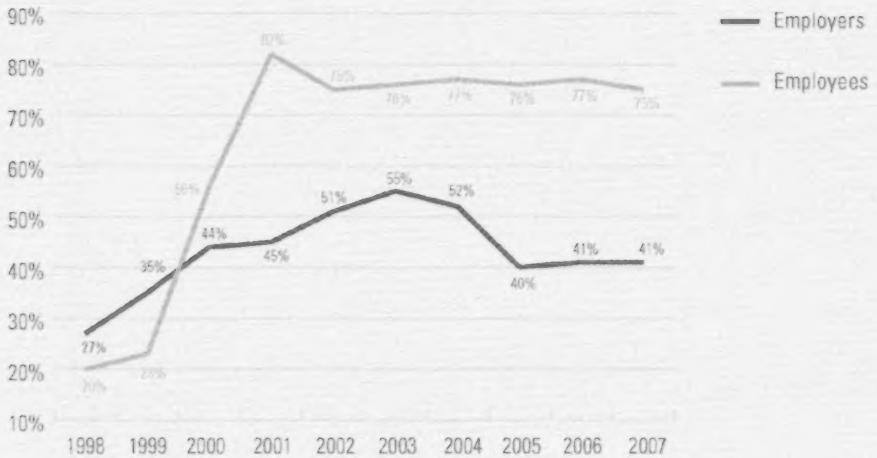
FIGURE 1 – EMPLOYERS AND EMPLOYEES BY SECTOR, SUBJECT TO THE *EMPLOYMENT EQUITY ACT*, AUDITED OR UNDER AUDIT

SECTOR	SUB SECTOR	SUBJECT TO THE ACT		COMPLETED OR UNDER AUDIT	
		Employers	Employees	Employers	Employees
Private Sector (as of December 31, 2006)	Banking	21	198,374	17	173,475
	Communications	97	225,501	34	159,645
	Transportation	320	192,799	89	90,575
	Other	79	81,536	31	41,312
Federal Public Service (as of March 31, 2007)		72	179,540	68	157,261
Separate Federal Agencies (as of March 31, 2007)		19	145,312	12	144,490
TOTAL		608	1,023,062	251	766,758

Employers and Employees Currently under the Act

Figure 1 shows that 41% of the 608 employers currently under the Act have been audited or are in the audit process. This percentage has declined since 2004 for two reasons. First, there has been an increase in new employers reporting under the Act. Second, employers who are no longer under the Act, but who had been the subject of an audit, have been removed from the list of employers currently under the Act. The percentage of the workforce audited or under audit has also dropped slightly from 77% to 75%, mainly as a result of the increase in the number of employees.

FIGURE 2 – PERCENTAGE OF EMPLOYERS AND EMPLOYEES UNDER THE *EMPLOYMENT EQUITY ACT* COVERED BY AUDITS



Audit Results

A total of 229 employers have been found in compliance with the requirements of the Act since 1998. The Commission found 11 employers in compliance in 2007: eight were under preliminary assessment audit, and three were under progress assessment audit. In addition, 18 employers were found to be in non-compliance: eight were under preliminary assessment audit and 10 were under progress assessment audit. No directions were issued in the past year.

Observed Challenges for Employers

Ten years of audit experience has identified fundamental components of an efficient employment equity program. Employers can take a number of proactive steps to enhance the likelihood of increased representation of designated groups.

Meaningful Consultation

As required by the Act, consultation of employee representatives is a key element for success in employment equity. Many employers who are proposing efficient strategies to increase the participation of designated groups in their workforce have first conducted meaningful consultation with their employees. This approach creates better decision-making and better buy-in, and reduces potential backlash from the implementation of an employment equity program. It also contributes to the development of creative solutions by the people who best understand the organization's environment and challenges.

Ensuring Ongoing Capacity

Employment equity audits reveal that too often employers are not investing enough resources and commitment on the continuing fulfillment of their employment equity obligations. While the initial audit may in some cases act as a catalyst for compliance, the increased level of effort is not always sustained afterward. Employment equity must be a continuous commitment, requiring ongoing vigilance, resources and support.

Corporate Planning, Culture and Accountability

Many employers rely on their human resources personnel to ensure compliance with the *Employment Equity Act*. Despite the good faith efforts of these specialists, this approach alone rarely succeeds. Employment equity is achieved when it becomes an integral part of corporate culture and business planning, where incentives are institutionalized. Managers at all levels can play a key role in reaching employment equity goals.

Proven Practices

Many employers have demonstrated a real commitment to improving their working environments. The proven practices highlighted below are examples of how some organizations are promoting a human rights culture within their workplace.

MBNA Enhances Participation of Persons With Disabilities

MBNA has retained the services of a national organization to recruit persons with disabilities for entry and higher level positions. The company requires external agencies to take into consideration its efforts to hire persons with disabilities when requesting temporary help and it also uses its websites to encourage applications from qualified candidates with disabilities. MBNA Corporation is an international credit card-issuing institution with about 1,700 employees in Canada.

CIDA Increases Representation of Visible Minorities

The Canadian International Development Agency (CIDA) encourages visible minorities to participate in developmental programs, such as the Career Advancement Program and the Executive Developmental Program for visible minorities. These positive initiatives help to increase representation levels for visible minority members at the executive levels of the federal public service. CIDA is Canada's lead agency for development assistance abroad. Its mandate is to support sustainable development in developing countries in order to reduce poverty and to contribute to a more secure, equitable, and prosperous world. CIDA employs about 1,600 people.

OC Transpo Promotes Accessibility and Accommodation

OC Transpo developed an accessibility plan to resolve outstanding issues relating to the accessibility of its employment and services programs. The plan includes purchasing only low-floor transit vehicles and a goal of acquiring a fully accessible bus fleet by 2015. All 30 Transitway stations and five O-Train stations are now accessible. The City is committed to ensuring full access for employees and candidates and to implementing duty-to-accommodate training for managers and supervisors. OC Transpo provides public transit services in Ottawa. Its mandate is to deliver safe, reliable and courteous service at a reasonable cost to all residents. OC Transpo employs about 2,400 people.

American Airlines Ensures Meaningful Consultation

American Airlines has taken appropriate steps to ensure meaningful consultation with its employee representatives within its Canadian operations. An Employment Equity Council, composed of a cross-section of volunteers from various levels and geographic locations, including members of designated groups, was established. The Council members have contributed to the development, implementation and monitoring of the company's employment equity plan. As part of its mandate, the Council is expected to discuss employee concerns regarding employment equity issues in the workplace and to provide advice on how these can be resolved. American Airlines employs about 300 people in Canada.

Finance Canada Increases Accountability

Finance Canada is taking steps to ensure the accountability of its managers in the implementation of its employment equity program. Senior managers' responsibility for employment equity has been entrenched in their accountability agreements. Finance Canada is the federal department primarily responsible for providing the Government of Canada with analysis and advice on the broad economic and financial affairs of Canada. The department employs about 1,000 people.

PORTRAIT OF THE FOUR DESIGNATED GROUPS IN THE CANADIAN WORKPLACE

A Summary of the Data

As part of its mandate to ensure compliance with the *Employment Equity Act*, the Commission tracks progress in the private and public sectors in representation levels of the four designated groups covered by the Act: women, visible minorities, Aboriginal peoples and persons with disabilities.

The goal is to achieve representation for each of the four groups equal to their availability in the workforce.

In the private sector, members of visible minorities were fully represented, and the number of visible minority members hired was above their availability. Their representation is highest in the banking sector where they continue to make gains. Women, persons with disabilities and Aboriginal peoples continue to be underrepresented in the private sector.

In the public service, women, Aboriginal peoples and persons with disabilities continue to be fully represented. However, members of visible minorities continue to be under-represented when compared to their availability in the workforce. Last year, they received the lowest proportion of hires visible minorities had received over the last six years. Given present hiring trends, gaps will continue to increase unless assertive, dynamic corrective actions are taken.

An Explanation of the Data

The Commission generates its findings by comparing information from a number of sources. The representation of the designated groups at the inception of the Act in 1977 is compared with the most recent data available from employers. For the private sector, this is December 31, 2006, and in the public sector, March 31, 2007.

Progress is measured against the 2001 Census data on the employment availability of women, visible minorities and Aboriginal peoples. The availability estimates for persons with disabilities are from the 2001 Participation and Activity Limitation Survey (PALS).

These are the most recent data for employment equity until data from the 2006 Census and PALS are available. The 2006 data will likely show an increase in the proportion of designated group members in the workforce as a result of current demographic trends. These include continuing immigration of visible minorities, higher fertility rates among Aboriginal peoples, and higher disability rates due to the aging of the workforce.

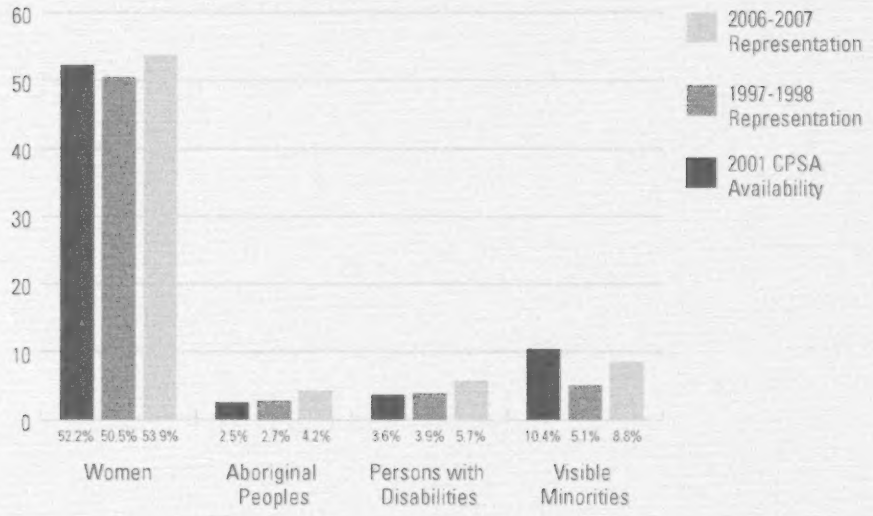
In the case of the public sector, the Canada Public Service Agency reconciles the Census results to take into consideration the composition of the public service workforce. These estimates include only Canadian citizens, since the *Public Service Employment Act* gives an absolute preference to Canadian citizens when hiring for the public service. This policy accordingly reduces the overall employment availability of members of visible minorities from 12.6% to 10.4%.

As of March 31, 2007, 72 federal departments and agencies employed just under 180,000 persons compared to approximately 177,000 the previous year. The public service filled more than 15,500 job openings this year – 2,500 more than in the previous year.

In the case of the private sector, statistics are based on the Commission's analysis of employer reports provided to the Minister of Labour as of December 2006. Since that time, additions and adjustments to the employer reports may have been submitted. Therefore, small discrepancies may exist between the numbers appearing in this report and those in the Annual Report on Employment Equity 2007 tabled by the Minister of Labour.

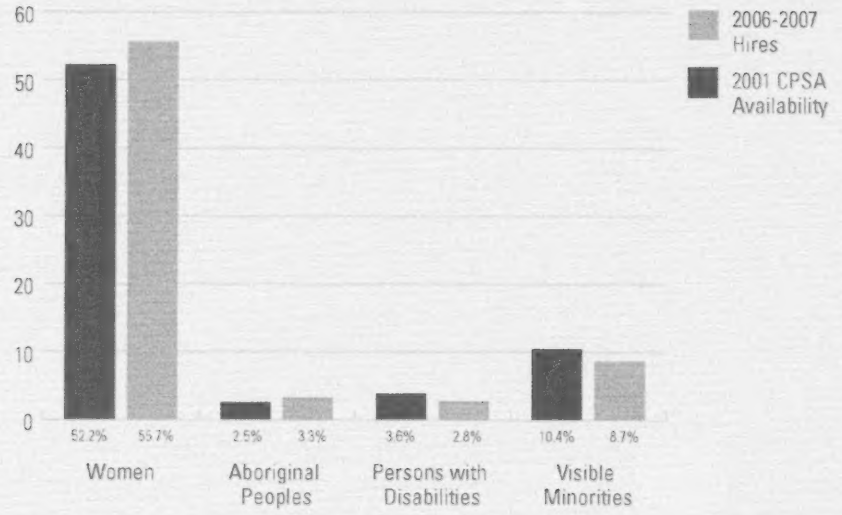
In 2006, a total of 517 employers filed data on almost 700,000 employees. More than 130,000 individuals were hired in the private sector in 2006 – approximately 23,000 more than in the previous year. Designated group members (women, members of visible minorities, persons with disabilities and Aboriginal peoples) received almost 50% of these hires – the same as in the previous year. Private sector organizations covered by the Act include banking, communication, transportation and "other" employers, such as mining companies, museums, grain companies, and nuclear power corporations.

FIGURE 3 - DESIGNATED GROUPS IN THE PUBLIC SERVICE



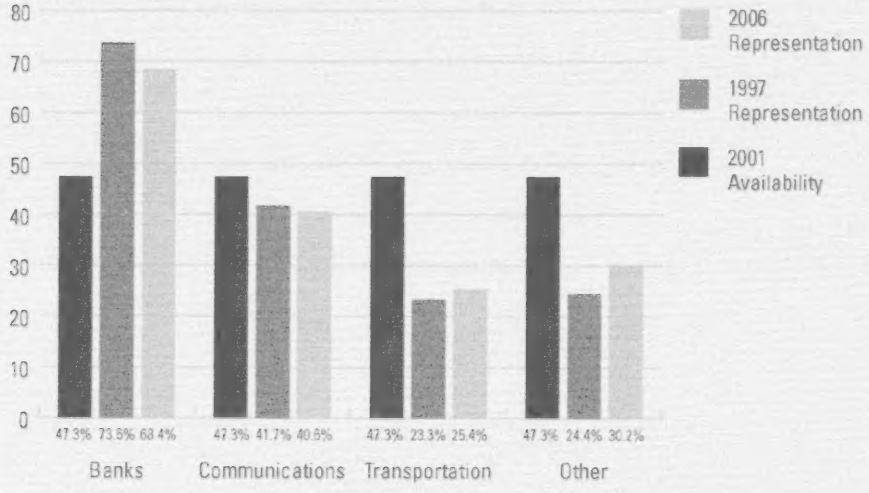
- The overall representation of women (53.9%) was in line with women's availability for the public service (52.2%) according to Census data. Women's share of positions in the executive group rose again this year. Women now occupy 40.4% of executive jobs, up from 38.8% the previous year, and 25.1% in 1997.
- In March 2007, women occupied 44.2% of scientific and professional jobs, compared to 32.2% in 1997. However, they continued to hold the vast majority of jobs (81.6%) in administrative support, just as they did in 1997 (84%).
- At 8.8%, visible minority members continue to be under-represented in the public service this year. This was very little improvement compared to 8.6% last year, and much lower than the public service availability of 10.4%. Moreover, visible minority members received just 8.7% of all hires this year, down from 9.9% the previous year. In fact, it was the lowest proportion of hires in the past six years. Because shares of hires are consistently lower than availability, visible minorities will likely remain under-represented in the public service in the coming years.
- The proportion of Aboriginal peoples in the public service in March 2007 was unchanged from the previous two years at 4.2%, but still above their availability at 2.5%. This past year, Aboriginal peoples received just 3.3% of all hires, down from 3.8% last year. In fact, their share of hires has been falling since 2001 when it attained 4.6%. Aboriginal persons include First Nations people, Status and Non-Status Indians, Inuit and Métis.
- The representation of persons with disabilities at 5.7% in March 2007 was down slightly from 5.8% the previous year; however, it remained above the public service availability of 3.6%. As in previous years, persons with disabilities received less than their anticipated share of hires this year at 2.8%. Since the representation of persons with disabilities has always been higher than their share of hires, this is likely due to increased self-identification and aging of the workforce rather than to hires of persons with disabilities.

FIGURE 4 - HIRES IN THE PUBLIC SERVICE



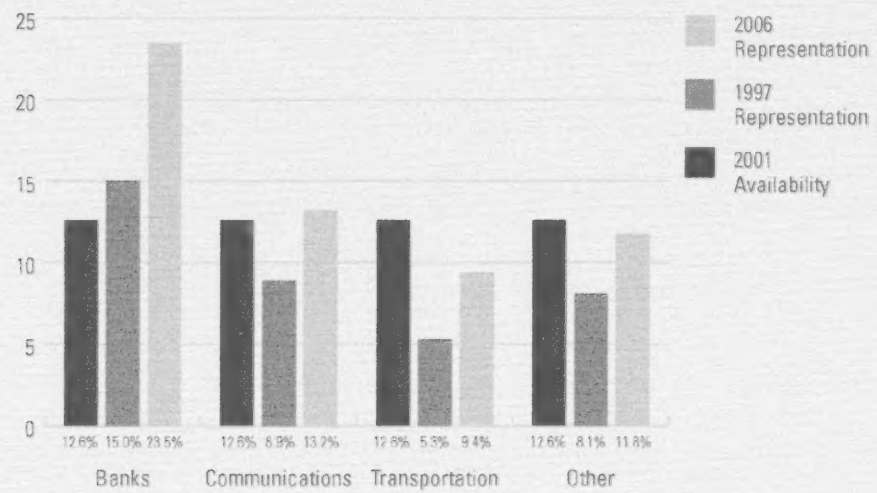
- Figure 4 presents the availability estimates and the hires for the four designated groups last year. Although women and Aboriginal peoples received hires that were comparable to their workforce availability, that was not the case for persons with disabilities and visible minorities. This situation has persisted for several years and it appears that these two groups have not benefited from the increase in hiring opportunities and the *Public Service Employment Act*, which gives an absolute preference to Canadian citizens and came into force in December 2005.

FIGURE 5 - WOMEN IN THE PRIVATE SECTOR



- Women held 43.1% of all jobs in 2006, down slightly from 44.6% in 1997. Availability was 47.3%, according to 2001 Census data.
- Women continued to hold most (68.4%) of the jobs in the banking sector, mainly because of the large number of clerical positions. In communications, women held 40.6% of all jobs, a slight decrease from 41.7% observed in 1997. They hold 25.4% of all jobs in the transportation sector, an increase from 23.3% in 1997.
- Some gains continued to be made by women in senior management. Women held 21.3% of senior management positions in 2006, up from 20.9% the previous year, and much higher than the percentage (14.8%) observed in 1997. However, their share of these positions was still lower than their availability (25.1%) according to Census data.
- Between 1997 and 2006, the proportion of women in senior management positions rose from 18.6% to 28.8% in the banking sector, from 14.9% to 21.3% in the communications sector, and from 9.9% to 15.7% in the transportation sector.

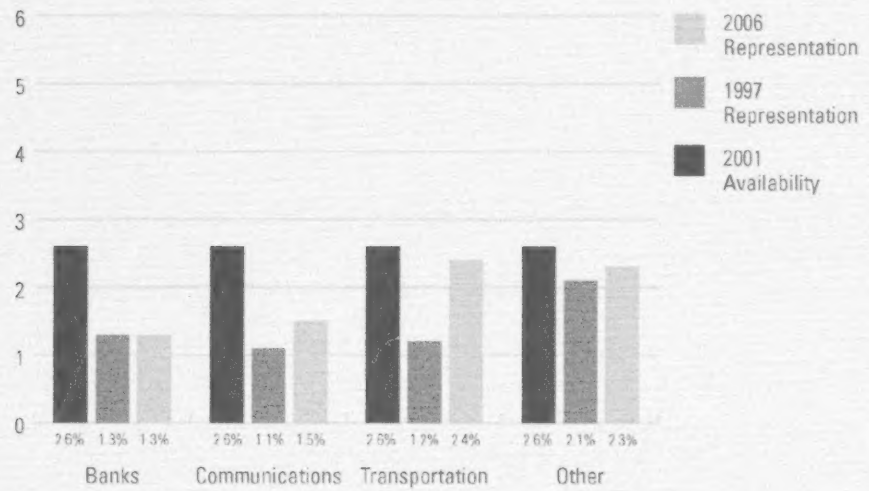
FIGURE 6 – VISIBLE MINORITIES IN THE PRIVATE SECTOR



- The share of jobs held by members of visible minorities has increased from 9.7% in 1997 to 14.9% in 2006. This is slightly higher than their availability of 12.6% according to Census data. While their share of senior management positions has increased steadily from 2.8% in 1997 to 5.1% in 2006, members of visible minorities remained under-represented in these occupations compared to their availability at 8.2%.
- Members of visible minorities received 16.7% of all hires in 2006, up from 15.0% the previous year. Since 1997, their overall share of hires has been consistently higher than their availability, although their progress has varied from sector to sector. This year, members of visible minorities received 21.3% of all hires in banking, but just 11.9% of those in transportation.

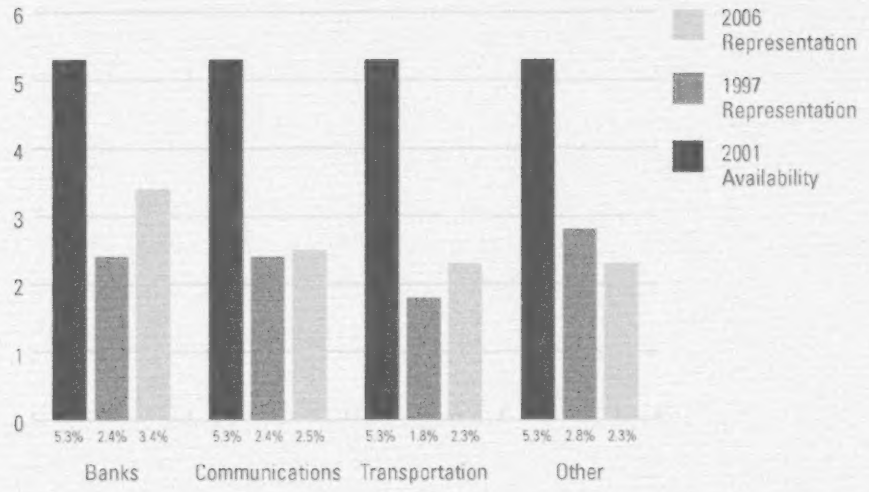
- As a result of consistently high shares of hires, visible minority representation was highest in the banking sector. They hold 23.5% of jobs in banking (up from 15.0% in 1997) and 8.7% of all senior management jobs, up from 8.0% the previous year and over twice as many (4.3%) as in 1997.
- Increases were also noted for visible minority members in the communications sector between 1997 and 2005, where their representation increased from 8.9% to 13.2%, and in the transportation sector, from 5.3% to 9.4%.

FIGURE 7 – ABORIGINAL PEOPLES IN THE PRIVATE SECTOR



- There was no improvement in the representation of Aboriginal peoples – First Nations people, Status and Non-Status Indians, Inuit and Métis – in the private sector in 2006. Their share of jobs remained at 1.8%, well below their 2.6% availability according to Census data. Their representation in each of the four sectors was also the same as in 2005.
- The share of hires obtained by Aboriginal peoples in 2006 at 2.0% was also unchanged from 2005. Hires in all sectors, with the exception of transportation, were less than Census availability. As a result, progress in the representation of Aboriginal peoples in the private sector over the next few years will be difficult to achieve.

FIGURE 8 - PERSONS WITH DISABILITIES IN THE PRIVATE SECTOR



- At 2.7%, the representation of persons with disabilities in 2006 was unchanged from the previous year. Persons with disabilities have consistently received less than their share of hires in all sectors. In 2006, they received just 1.3% of all hires, up slightly from 1.2% the previous year and 1.0% in 1997.
- Some improvements were noted. In the banking sector, where their hiring has been higher than in other sectors for the past few years, persons with disabilities held 3.4% of jobs, up from 2.4% in 1997.
- However, in both the transportation and communication sectors, their share of jobs declined slightly between 2005 and 2006 from 2.4% to 2.3%, and 2.6% to 2.5%, respectively.

RESOLVING DISPUTES

The Commission is dedicated to resolving disputes in a fair, transparent and effective way. Increased focus on early dispute resolution through mediation and informal dialogue better serves those who contact the Commission about possible discrimination. Positive impacts for everyone affected include savings in time and money, reduced emotional distress, strengthened morale and increased productivity.

At year-end, the Commission had an active caseload of 576 complaints, down from 614 the previous year. The average age of its active caseload also decreased from 9.5 months in 2006 to 9.1 months in 2007.

A NEW APPROACH

In 2007, the Commission introduced new practices that provided earlier opportunities for parties to informally resolve their human rights disputes. This initiative is part of our overall focus on being more responsive to the needs of those who contact us.

The new approach was implemented by merging the Commission's intake and alternative dispute resolution (ADR) services to create the new Resolution Services Division with the mandate to help parties resolve disputes as soon as they are brought to the Commission's attention, at the time of an initial inquiry. With an expanded staff of professional mediators and senior officers, this Division provides an opportunity for the parties to immediately start thinking about possible solutions, and a venue to discuss them. In instances where this step is inappropriate or where a resolution cannot be achieved, a formal complaint can be filed.

THE NEW PROCESS

Resolution Services is the first point of contact for people who believe they have been discriminated against by a federally regulated employer or service provider. The first step is to determine whether the allegations of discrimination fall within the Commission's jurisdiction as described in the *Canadian Human Rights Act*. If they do not, our intake personnel will assist the inquirer in identifying other places or ways to raise his or her concerns (such as raising them with a provincial commission).

Where the Commission does have jurisdiction, our legislation requires us to consider whether the alleged victim has exhausted "grievance or review procedures otherwise reasonably available" (section 41 (1)). If another process is reasonably available, the inquirer is encouraged to address the dispute through that process. Examples of other redress processes include union grievance procedures and complaint processes set up under other laws, such as the Tax Court, the Canada Labour Relations Board or the Canadian Transportation Agency. Due to their specialized knowledge and expertise, these processes can be very efficient and effective.

If no other process is reasonably available, the Commission supports the parties in trying to settle the matter. An officer speaks to the parties separately to explore possible solutions to the concerns raised by the inquirer. This process is called "early resolution."

Early Resolution

Early resolution is the first dispute resolution strategy in the Commission's continuum of ADR services. This voluntary, on-the-record process of facilitated discussion is carried out by telephone rather than face-to-face. Sometimes referred to as "shuttle mediation," this process is the quickest and least formal of the Commission's ADR services. Early resolution has special advantages. Providing parties with the ability to begin discussions immediately, without filing a complaint, can be less threatening than filing a complaint. The informal process also gives parties a chance to solve the problem before it escalates – increasing the likelihood of resolution.

Early Resolution

Case Study 1: The inquirer had been denied disability leave and was afraid he might even lose his job. The Commission's Early Resolution Advisor contacted the employer's human resources director to discuss the situation. Within an hour, the employer agreed to approve the disability claim, and the parties worked out a return-to-work plan.

Case Study 2: The inquirer had asked her employer for leave to care for a family member who had been diagnosed with a terminal illness. The employer was reluctant to grant the leave, and suggested that the employee resign. The Early Resolution Advisor contacted the employer and, within a week, leave without pay was granted. The inquirer had her job to come back to after the death of the family member.

Case Study 3: The inquirer was retired. His employer provided medical benefits to retired employees and their families. The inquirer's same-sex partner had been receiving these benefits until the company changed insurance carriers. The Inquirer had been trying for six months to get his partner's benefits reinstated. The Early Resolution Advisor spoke to the company's human resources representatives and, three weeks later, the benefits were reinstated.

Preventive Mediation

If the parties are prepared to consider solutions but find it impractical to do so by telephone, the case is referred to a mediator. As with early resolution, the objective of preventive mediation is to encourage the parties to discuss the issues without delay. The mediator arranges a confidential, face-to-face meeting between the parties to look at settlement options in greater detail.

Preventive Mediation

Case Study 1: The inquirer was injured at work. After a period of disability leave, he returned to work with a list of medical restrictions. He alleged that neither his employer nor his union made any effort to accommodate him in employment. The matter was settled with an agreement that his employer and union would facilitate his return to work as soon as he provided updated medical information.

The Commission's new approach has generated positive results. Preliminary data indicates that the Commission assisted parties in resolving 58 disputes through early resolution processes; that is, where no formal complaint was filed.

Complaints

If a dispute cannot be resolved through early resolution or preventive mediation and the inquirer wishes to pursue the matter, he or she can file a complaint. Once the complaint is accepted, the other party is notified and the file is referred to the Investigations Division for a preliminary assessment or an investigation. At any point, the case can also be assigned to a mediator, at the parties' request.

Mediation

Case Study 1: The complainant, a Caucasian woman, worked as a manager for an Aboriginal band council. She alleged that a senior member of the council encouraged the other employees and the larger community to file harassment complaints against her. The matter was settled when the band council agreed to revise its policy on workplace discrimination and harassment. The council also decided to make the settlement public, as a learning experience for the community.

Case Study 2: The complainant, who is originally from Haiti, worked in a warehouse. He alleged that his employer treated him and other black employees differently while investigating a series of thefts in the workplace. The complainant was eventually fired. Mediation resulted in a settlement, which provided for the complainant's return to his job.

Client Satisfaction

The Commission is committed to ensuring and measuring satisfaction with the mediation and conciliation processes. Parties are asked to complete a client satisfaction survey. Analysis of the data will begin in 2008.

Preliminary Assessment

Preliminary assessment is a non-confidential process that encourages frank and open discussion between the parties. The assessor works with the parties to clarify the allegations and resolve the issues. The assessor can provide a non-binding assessment of the complaint (the strengths and weaknesses of the case) as well as the remedies that could be imposed by a Tribunal if the complaint were eventually substantiated. Once an assessment is completed, several things can happen. The assessor can refer the file for a full investigation, or draft a report to be submitted to the Commission in cases where there is sufficient information to make a decision on the merits of the complaint.

Preliminary Assessment

Case Study 1: The Commission received a complaint dealing with membership in a Band. After several discussions with the parties, the assessor determined that the complaint raised constitutional issues. As a result, an investigation was not conducted, and the assessor prepared a report to the Commission recommending that the case be referred to Tribunal to clarify the legal issues.

Case Study 2: The Commission received a complaint from an individual who was alleging discrimination based on religion. The complainant alleged that he had been prevented from traveling while wearing a kirpan (a ceremonial dagger). After Commission staff reviewed the file and the most recent case law with the parties, the matter was settled with the transportation company agreeing to change its policy.

Investigation

During an investigation, the respondent is asked to provide its full response to the allegations and, once received, the complainant is asked to comment on the respondent's position. The investigator reviews the information gathered and determines if further information is required. Further information can be obtained through witness interviews, requests for additional information from the parties or third parties, etc. At the conclusion of the investigation, an investigation report is prepared with a recommendation to the Commission. Parties are given an opportunity to comment on the report before the Commission makes a decision. After reviewing the investigation report and the parties' submissions, the Commissioners can dismiss the complaint, appoint a conciliator, or refer the matter to the Canadian Human Rights Tribunal for hearings.

Conciliation

Conciliation is similar to mediation in that it offers a controlled environment in which the parties can exchange ideas and work towards a mutually agreeable solution. It differs from mediation, however, in that the accent is on the merits of the case rather than on facilitation. Although the conciliator uses the same techniques as a mediator to encourage discussion and negotiation, he or she is also mandated to give the parties an opinion on the likelihood of success in litigation and the remedies that are likely to be achieved in a number of significant ways. Conciliation also differs from mediation in that the conciliator can disclose settlement offers to the Commissioners with the consent of the party making the offer. If the complaint is settled at conciliation, the agreement is submitted to the Commission for approval. If no agreement is reached, the case can return to the Commission for further review and decision, or be sent directly to the Tribunal.

Conciliation

Case Study 1: The complainant, a term employee, was let go after telling her supervisors that she was pregnant. She alleged that she had been promised a permanent job. The matter was settled when the respondent agreed to help the complainant prepare for upcoming competitions and offered her financial compensation for the time off work.

Case Study 2: The complainant alleged that she was sexually harassed by a senior manager. She alleged that he asked for sex in exchange for his support. She eventually resigned to get away from the situation. Conciliation resulted in a settlement that provided for the complainant's reinstatement, as well as financial compensation for lost wages, and for pain and suffering.

FIGURE 9 – NUMBER OF INQUIRIES DURING THE LAST THREE YEARS

	2005	2006	2007
Inquiries*	17,750	16,200	12,306

*The first contact a person or group has with the Commission regarding an incident, practice or policy that the person or group believes is discriminatory. The contact can take place by telephone, mail, email, or in person.

FIGURE 10 – SIGNED COMPLAINTS BY TYPES OF RESPONDENTS

	2005		2006		2007	
	#	%	#	%	#	%
Private Sector	301	40%	316	44%	315	49%
Federal government*	338**	45%	301	42%	253	40%
Unions	27	4%	17	2%	29	5%
Individual	52	7%	49	7%	21	3%
Reserves, Bands and Councils	34	4%	34	5%	20	3%
Total	**752**	**100%**	**717**	**100%**	**638**	**100%**

* Includes employers in the core public administration, separate federal government organizations or agencies and crown corporations.

** The Commission accepted a group of 594 related complaints which are counted as one.

FIGURE 11 – SIGNED COMPLAINTS BY PROVINCE OR TERRITORY

	2005		2006		2007	
	#	%	#	%	#	%
Ontario	361	48%	379	53%	305	48%
British Columbia and Yukon	113	15%	95	13%	104	16%
Quebec	84	11%	70	10%	75	12%
Alberta, Northwest Territories and Nunavut	77	10%	57	8%	61	10%
Nova Scotia	24	3%	29	4%	27	4%
Manitoba	40	6%	33	5%	22	3%
Outside of Canada	2	0%	1	0%	19	3%
Saskatchewan	32	4%	20	3%	17	3%
New Brunswick	15	2%	18	2%	5	1%
Newfoundland and Labrador	4	1%	5	1%	3	0%
Prince Edward Island	0	0%	10	1%	0	0%
Total	**752***	**100%**	**717**	**100%**	**638**	**100%**

* The Commission accepted a group of 594 related complaints which are counted as one.

FIGURE 12 - GROUND(S) OF DISCRIMINATION CITED IN SIGNED COMPLAINTS

Ground*	2005		2006		2007	
	#	%	#	%	#	%
Disability	448	39%	372	34%	298	36%
Sex	130**	11%	160	15%	113	13%
Age	64	5%	68	6%	99	12%
National or Ethnic Origin	138	12%	145	13%	98	12%
Race	133	12%	112	10%	79	9%
Colour	91	8%	82	8%	52	6%
Family Status	61	5%	56	5%	37	4%
Religion	49	4%	39	4%	31	4%
Sexual Orientation	27	2%	36	3%	18	2%
Marital Status	21	2%	20	2%	14	2%
Conviction for which a pardon has been granted	2	0%	0	0%	1	0%
Total	**1,164**	**100%**	**1,090**	**100%**	**840**	**100%**

* Total number of grounds cited exceeds the total number of complaints signed because some complaints dealt with more than one ground.

** The Commission accepted a group of 594 related complaints which are counted as one

The numbers reported in our last Annual Report have been adjusted following a review of data during 2007.

FIGURE 13 - TYPES OF ALLEGATIONS CITED IN SIGNED COMPLAINTS

Allegation*	2005		2006		2007	
	#	%	#	%	#	%
Employment-related (sections 7, 8, 10)	1,235**	80%	925	72%	774	73%
Services-related (sections 5, 6)	131	8%	120	9%	106	10%
Harassment - employment (section 14)	134	8%	166	13%	106	10%
Retaliation (section 14.1)	13	1%	18	2%	30	3%
Union membership (section 9)	14	1%	5	0%	17	2%
Hate messages (section 13)	13	1%	20	2%	16	2%
Harassment - services (section 14)	8	1%	18	1%	5	0%
Pay equity (section 11)	1	0%	9	1%	2	0%
Notices, signs, symbols (section 12)	1	0%	1	0%	0	0%
Total	**1,550**	**100%**	**1,282**	**100%**	**1,056**	**100%**

* Total number of allegations cited exceeds the total number of signed complaints because some complaints dealt with more than one allegation.

** The Commission accepted a group of 594 related complaints which are counted as one.

The numbers reported in our last Annual Report have been adjusted following a review of data during 2007.

FIGURE 14 – FINAL DECISIONS BY TYPE

Final Decisions by Type	2005	2006	2007
Section 40/41 Analysis*	428	384	288
Dismissed	392	297	203
Settled	352	278	234
Referred to Tribunal	102	96**	136
Total	1,274	1,055	861

* Under section 40/41 of the Act, the Commission may decide not to deal with a complaint because the complainant ought to pursue another redress mechanism, or because the complaint is out of time, out of jurisdiction, or considered trivial, frivolous or vexatious.

** Our last annual report showed 115 cases having been referred to Tribunal in 2006. That figure has been adjusted downward to 96 this year to reflect the fact that 19 of the cases were settled through conciliation during 2007, prior to Tribunal hearing.

LITIGATION

In 2007, the Commission continued to participate in high impact cases in order to further human rights law for all Canadians. The Commission's involvement in these sorts of cases supports its strategic objective of acting as a proactive and influential catalyst for moving forward on human rights issues. Our successes – and those of many other parties engaged in these cases – advance jurisprudence to support human rights advances for all. And yet, a next step is always necessary: it is important for employers and service providers to inform themselves of these judicial rulings and adapt their future actions accordingly. The Commission's future focus will encourage these positive shifts.

Some of the cases in which the Commission participated include the following:

Tribunal

Walden et al. v. Treasury Board of Canada et al.

In a decision rendered December 13, 2007, the Tribunal upheld the complaint filed by Ruth Walden et al. ("the Nurses") against the Treasury Board of Canada. The Tribunal found that while the nurses in medical adjudicator positions performed the same or substantially similar work as the medical advisors, they were not classified as health professionals within the Health Services Group in the Public Service.

The Tribunal found that this constituted a prima facie case of discrimination on the basis of sex and that it was not justified as a bona fide occupational requirement.

The Tribunal ordered that the discriminatory practice cease and gave the parties three months to reach an agreement on financial compensation. If an agreement is not reached within three months, the Tribunal will deal with the remedy issue. The Treasury Board applied to have the decision judicially reviewed.

Knight v. Société des Transports des Outaouais (STO)

Following mechanics training and a summer internship, the STO was prepared to hire Mr. Knight full time. During pre-employment medical testing, the complainant revealed that the Commission de la santé de la sécurité au travail (CSST) concluded in 1998 that he has a permanent limitation because he lost a finger during a workplace incident. The STO refused to hire him because of the CSST decision. The Tribunal concluded that the STO had failed to fulfill its obligation to accommodate the complainant. This decision established the precedent that the Tribunal is not bound by a decision made by the CSST.

Jim St. John v. Canada Post Corporation

The Tribunal found that Canada Post had systemically discriminated against disabled employees, contrary to section 10(a) of the *Canadian Human Rights Act*, by refusing to fill positions vacated by employees who had taken leave. This policy, known as "no backfilling," prevented Canada Post from identifying and assigning work to the complainant, thereby denying him the opportunity to complete his shift and to be paid his regular wages.

Further, the Tribunal found that Canada Post's policy of refusing to offer a choice of leave to disabled employees sent home during periods of low mail volume was systemically discriminatory.

On another point, the Tribunal found that Canada Post's "no lay-off" policy, whereby employees are not to be laid off for the day due to shortage of work, was not applicable to situations where Canada Post sent home disabled workers unable to do the available work.

Bignell-Malcolm v. Ebb and Flow First Nation

The complainant, Ms. Bignell-Malcolm, alleged that in 2003, Ebb and Flow Indian Band (EFIB) refused to hire her as Director of Education because she was Cree rather than Ojibway and that this refusal constituted discrimination on the basis of her race and ethnic or national origin, contrary to section 7(a) of the *Canadian Human Rights Act*.

The Tribunal found that a prima facie case of discrimination was established: the complainant was qualified and was offered the job. The offer was subsequently rescinded, and someone less qualified was hired instead. The Tribunal awarded the complainant lost wages of approximately $50,000. It also awarded $7,000 for pain and suffering, half of the legal fees for the hearing, other amounts for expenses incurred, and interest. The Tribunal also awarded the complainant $5,000 in special compensation due to the "deceitful manner in which the job was rescinded."

Lavoie v. Treasury Board of Canada (awaiting decision)

The complainant and the Commission argue that the Treasury Board's policy on acquiring indeterminate status after three years on term has an adverse impact on women on maternity leave as such leave period is not included in the calculation of the length of service.

Warman v. Wilkinson 2007 CHRT 27

In a decision rendered on July 10, 2007, the Tribunal upheld the complaint filed by Mr. Warman against Mr. Wilkinson but dismissed the complaint against the Canadian Nazi Party. The Tribunal found that Mr. Wilkinson communicated messages through a website that were likely to expose individuals to hatred and/or contempt on the basis of religion, sexual orientation, race, colour, national or ethnic origin, or disability. The Tribunal agreed with the Commission that: "the content of the hate messages was both vicious and extreme...not only did the messages attribute numerous and varied criminal acts to the [targeted] groups, described them as corrupt and devious, but some messages went so far as to openly advocate the extermination of Jews, Blacks and other non-whites." The Tribunal ordered a penalty of $4,000 and a cease and desist order.

Warman v. Tremaine 2007 CHRT 2

In a decision dated February 2, 2007, the Tribunal upheld the complaint filed by Mr. Warman against Mr. Tremaine. The Tribunal rejected the respondent's arguments that Internet postings were not public and did not expose individuals to hatred because they were posted on a website where like-minded people communicated amongst themselves. The Tribunal found the mere fact of putting postings on the Internet, which is accessible to almost everyone, was sufficient to expose individuals to hatred. The Tribunal found that Mr. Tremaine communicated messages that were likely to expose individuals to hatred or contempt, contrary to section 13, and ordered the respondent to cease the discriminatory practice and to pay a penalty of $4,000.

Warman v. Beaumont 2007 CHRT 49

In a decision rendered on October 26, 2007, the Tribunal upheld the complaint filed by Mr. Warman against Ms. Beaumont. The Tribunal held that the respondent communicated messages that were likely to expose individuals to hatred or contempt. The Tribunal found that Ms. Beaumont "repeatedly used highly inflammatory and derogatory language with respect to several groups, based on their religion, race, national or ethnic origin, or sexual orientation." The Tribunal held that section 13 addresses all hateful messages that are communicated on the Internet and rejected the respondent's arguments that she did not expose individuals to hatred because she used the derogatory language only among her circle of friends and not in front of the targeted group. The Tribunal ordered Ms. Beaumont to pay the sum of $3,000 in special compensation and ordered her to cease the discriminatory practice and to pay a penalty of $1,500.

Federal Court

Canadian Forces v. Buffet et al.

The Federal Court upheld a Tribunal finding that the Canadian Forces' funding of fertility treatment discriminated against men on the basis of sex. The Tribunal's award was modified to provide funding restricted to the treatment performed on the male complainant.

CPC v. PSAC (ongoing)

The Commission has appeared before the Federal Court to defend the decision of the Canadian Human Rights Tribunal upholding the pay equity complaint in this matter.

CHRC v. Air Canada et al. (ongoing)

The Commission has applied for judicial review of the Canadian Human Rights Tribunal's decision upholding the mandatory age of retirement for Air Canada pilots.

Birkett v. CHRC and Sue Goodwin

This judicial review decision upheld a Tribunal decision, which had found that the complainant was sexually harassed and had awarded her $5,000 in compensation. The respondent applied for judicial review, alleging the Tribunal hearing was biased and unfair. The Court noted that at Tribunal neither party was represented and the CHRC did not appear, and that as a result the Tribunal member had played a more active role than usual. However, the Court agreed with CHRC submissions in finding that the Tribunal Chair was unbiased and "scrupulously fair and helpful to both parties" while holding the hearing. The Court concluded that the Tribunal decision was not unreasonable on the facts or the law, and the application for judicial review was dismissed.

Federal Court of Appeal

Pankiw v. CHRC

A unanimous Federal Court of Appeal decision confirmed a Tribunal decision that Members of Parliament enjoy no immunity from the *Canadian Human Rights Act* when sending householders to constituents.

Chopra v. Health Canada

In a decision dealing with the remedy that can be awarded by the Canadian Human Rights Tribunal, the Federal Court of Appeal found that significant deference is owed to the Tribunal with respect to the exercise of its remedial authority.

Supreme Court of Canada

The Supreme Court of Canada granted the Commission leave to intervene in *Honda v. Keays*, a case dealing with the common law court's jurisdiction to award punitive damages for breaches of human rights legislation. The hearing is scheduled for February 20, 2008.

Council for Canadians with Disabilities v. VIA Rail

In *Council for Canadians with Disabilities v. VIA Rail*, the Supreme Court issued a milestone decision for human rights law in Canada and for the accessibility of persons with a disability. The Court confirmed the decision of the Canadian Transportation Agency that ordered VIA Rail to make its new Renaissance rail cars accessible to persons with disabilities. The Court further agreed with the Commission (which had intervener status) that the Canadian Transportation Agency and all administrative tribunals are required to interpret legislation in a manner consistent with human rights law.

The Commission intervened in this matter to argue that human rights norms, and the duty to accommodate in particular, are paramount and must be applied by every decision-maker in dealing with human rights issues. The Court stated, "VIA cannot now argue that it was entitled to resile from these norms because it found a better bargain for its able-bodied customers. Neither the *Rail Code*, the *Canadian Transportation Act*, nor any human rights principle recognizes that a unique opportunity to acquire inaccessible cars at a comparatively low purchase price may be a legitimate justification for sustaining inaccessibility. In the expansion and upgrading of its fleet, VIA was not entitled to ignore its legal obligation and public commitments."

WHO MAKES HUMAN RIGHTS DECISIONS?

A recent trend of expanding the fora for bringing forward human rights issues provides enhanced access to human rights protections. This trend has developed through case law and legislation.

Case Law

Recently, a number of judicial cases (summarized below) have confirmed that in addition to human rights commissions, there are other venues for bringing forward human rights issues. These include arbitrators, grievance procedures, the Canadian Transportation Agency, and a provincially created tribunal.

This trend began in the case of *Parry Sound (District) Social Services Administration Board v. Ontario Public Service Employees Union, Local 324*, [2003] 2 S.C.R. 157, 2003 SCC 42, where the Supreme Court of Canada held that human rights codes were incorporated into collective agreements, therefore granting arbitrators the authority to enforce human rights obligations. The fact that human rights commissions had greater expertise than labour arbitrators regarding human rights violations was an insufficient basis on which to find that an arbitrator did not have the power to enforce the rights and obligations found in human rights legislation.

In *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667, 2005 SCC 30, the Supreme Court of Canada determined that a complaint of discrimination and harassment that arose in the context of a claim for constructive dismissal fell within the grievance procedure established under the *Parliamentary Employment and Staff Relations Act*. The system of redress in the *Parliamentary Employment and Staff Relations Act* was found to run parallel to the enforcement mechanisms under the CHRA.

In the case of *Council of Canadians with Disabilities v. VIA Rail* [2007] 1 S.C.R. 650, 2007 SCC 15, the Canadian Transportation Agency was found competent by the Supreme Court of Canada to consider human rights law when carrying out its statutory mandate. In *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC 14, a provincially created tribunal was found to have the jurisdiction to consider human rights legislation in rendering its decisions.

Legislation

In the new *Public Service Labour Relations Act*, S.C. 2003, c. 22, and *Public Service Employment Act*, S.C. 2003, c. 22, Parliament has also conferred jurisdiction on the Public Service Relations Board and the Public Service Staffing Tribunal to interpret and apply human rights legislation. At the same time, Parliament confirmed the expertise of human rights commissions in these matters by granting them intervener status in proceedings before these bodies.

UPHOLDING ACCOUNTABILITY

The Commission is committed to leading by example and sustaining an organizational culture of respect, integrity, dignity, and understanding. Valuing our employees, and setting the highest standards of performance and accountability and striving daily to model them, supports our role as a dynamic and progressive leader in human rights promotion and practice. The Commission is committed to sound management in all aspects of its work, particularly with respect to resource management, whether financial or human resources. Deepening our learning culture and expanding learning opportunities are also priorities.

WORKPLACE WELL-BEING

The Commission is a flexible, high performance organization that supports a quality work environment. Employee engagement contributes to a fair, welcoming and healthy workplace. A strong commitment to continuous growth and to an enhanced culture of workplace well-being is reflected in the Commission's programs and services.

The Labour Management Consultation Committee provides a forum for discussion of human resources issues between the Commission's bargaining agents and management. Throughout 2007, the Committee continued to hold its quarterly meetings. Bargaining agents were also full participants in our annual strategic planning sessions.

The Commission continuously evaluates its human resource needs, as part of our strategic focus of attracting and retaining a qualified and diverse workforce in a competitive labour market.

Workplace diversity continues to be a priority. The Commission successfully sustains its representation of designated groups to levels above their availability in the workforce; all designated groups were fully represented in the Commission's workforce in 2007.

The Commission's own employment equity targets are set by the Canada Public Service Agency based on 2006 Census data, and reflect the categories of employment in our workforce. As of December 31, 2007, the Commission had 173 employees, of whom, by self-identification:

- 64.2% were women against a target of 61%;
- 13.3% were persons with disabilities against a target of 3.4%;
- 11.6% were members of visible minorities against a target of 8.6%; and,
- 4.0% were Aboriginal peoples against a target of 2.6%.

The Commission is committed to providing a fully bilingual workplace where staff may work in their official language of choice. As of December 31, 2007:

- 76.3% of positions at the Commission were designated bilingual imperative, 22.5% were English essential, and 1.2% were either English or French; and,
- 52% of employees said their mother tongue was English and 48% French.

Staff turnover in 2007 was 15.6%, compared to 22.5% in 2006. There have also been changes in senior management due to retirement and promotion.

As part of its efforts to support a continuous learning culture, the Commission offered services to help employees meet their individual learning plan objectives and develop their career management skills. Specifically, the Learning and Development Division offered individual career counseling services to help employees identify their personal values and traits, and explore their right fit in order to maximize their productivity and increase job satisfaction and personal fulfillment.

Managing information technology security is another facet of ensuring a modern workplace. To provide a secure workplace and working environment, the Commission has been implementing the Treasury Board Secretariat (TBS) Management of Information Technology Standard. By doing so, the Commission both complies with TBS standards, and will also provide its employees with IT support, guidelines and policies to operate in a safe and secure IT environment.

The Commission continues to offer its employees access to an informal conflict management system to recognize, respond to and resolve workplace issues early.

STEWARDSHIP

The Commission and its dedicated staff set the highest standards of performance and accountability and strive daily to model them. The Commission has modern and effective policies, practices and frameworks in key program and corporate areas, including finance, human resources, procurement, and information management. Horizontal oversight committees at the Director General level provide recommendations for future directions through the Secretary General to the Chief Commissioner.

TBS has commended the Commission for the quality of its management in a number of areas:

Values-based leadership and organization culture

The Commission was commended for strong performance in addressing professional, ethical and people values, and for an acceptable performance regarding the extent to which its leaders foster a culture of respect and integrity throughout the organization.

Extent to which the workplace is fair, enabling, healthy and safe and extent to which the workforce is productive, principled, sustainable and adaptable

The organization has demonstrated "strong" health and safety practices in the workplace. This is supported by the strong results received from the Public Service Employee Survey. This survey found that employees are proud of the work in their unit; are committed to making the organization successful; and know where to get help for ethical dilemmas. The survey also noted that the organization has strong official languages practices.

PERFORMANCE MANAGEMENT

Case, Audit and Initiative Management System

The Commission is improving its performance management capabilities and reporting by upgrading its case management system. The project aims to provide Commission staff with a more efficient and effective system. Through these upgrades, the Commission will implement workflow capabilities; develop connections to the Commission's Records, Document and Information Management System, where necessary; and make existing case management functionality accessible to teleworkers and users with screen readers.

FIGURE 15 - ORGANIZATION CHART

Commissioners as of December 31, 2007

Chief Commissioner: Jennifer Lynch, Q.C.
Deputy Chief Commissioner: David Langtry
Part-time Commissioners: Harish C. Jain, Carol McDonald

The Commission expresses its thanks to two Commissioners whose mandates expired in 2007 for their important contributions to the work of the Commission: Mr. Kelly Russ and M. Aimable Ndejuru